



Decision with Statement of Reasons of the First-tier Tribunal for Scotland (Housing and Property Chamber) under Regulations 9 and 10 of the Tenancy Deposit Schemes (Scotland) Regulations 2011 (“the 2011 Regulations”)

Chamber Ref: FTS/HPC/PR/21/2816

Re: Property at Flat 4, 66-68 Victoria Street, Perth, PH2 8JS (“the Property”)

Parties:

Miss Hannah Geddes, 3E Westgrove Avenue, 75 Jeanfield Road, Perth, PH1 1PB and Miss Emily Louise Geddes, 3 Craigie Road, Perth, PH2 0BL (“the Applicants”) and

Mr Russell David Baird, 3 Cameron Walk, Burrelton, PH13 9NN (“the Respondent”)

Tribunal Member: G McWilliams (Legal Member)

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (“the Tribunal”) determined that an order for payment of the sum of £500.00, in terms of Regulation 10 (a) of the 2011 Regulations, should be made.

Background

1. This Application, lodged with the Tribunal between 11th November 2021 and 17th November 2021, was brought in terms of Rule 103 (Application for order of payment where Landlord has not paid the deposit into an approved scheme) of the First-Tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 as amended (“the 2017 Regulations”). The parties’ tenancy agreement began on 6th July 2020 and ended on 31st October 2021. The Applicants paid a deposit amount of £795.00 at the commencement of the tenancy and this was lodged with Safe Deposits Scotland Limited (“SDS”) on 10th September 2020.

Case Management Discussion on 18th January 2022

2. A Case Management Discussion (“CMD”) proceeded by remote telephone conference call at 10.00am on 18th January 2022. Both of the Applicants, Miss Hannah Geddes and Miss Emily Louise Geddes, attended. Ms A. Lewis, Regional Manager, and Ms N Juhasz Senior Property Manager, of Belvoir Property Management Ltd, the letting agents who acted for the Respondent in respect of the parties’ tenancy, attended on behalf of the Respondent.
3. Miss Hannah Geddes made submissions to the Tribunal on behalf of both Applicants. She stated that the Applicants had experienced various communication difficulties with the letting agents. She said that they had made their Application to the Tribunal after being informed by SDS that their deposit had been lodged late. She said that they had not previously been aware of the 30 days’ time period, from the date of the start of a tenancy, for lodging deposits.
4. Ms Lewis apologised for any communication difficulties that the Applicants had had with her company. She also apologised for the delay in lodging the tenancy deposit. She stated that at the time of the lodging of the deposit the letting agents were changing over to a Cloud based IT system. Ms Lewis said that they were suffering IT problems during this process. She also stated that at the that time the letting agents were short staffed due to the ongoing Covid pandemic. Ms Lewis said that when the letting agents were carrying out a reconciliation, several weeks later, they realised that the deposit had not been transferred to SDS and immediately had this done.
5. Both Miss Geddes and Ms Lewis acknowledged that the deposit had been lodged around 19 days late and stated that the issue of the return of the deposit had not yet been dealt with by Safe Deposits Scotland.
6. After hearing from the participants, and given their statements, the Tribunal afforded them a short period of time to have direct discussions with a view to possibly reaching a settlement of the matter. The Applicants and the letting agents were not able to resolve the matter and Miss Hannah Geddes and Ms Lewis said that, in the circumstances, they sought that the Tribunal determine the Application.

Reasons for Decision

7. Rule 17 of the First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 (“the 2017 Regulations”) provides that the Tribunal may do anything at a CMD which it may do at a Hearing, including making a Decision. The Tribunal was satisfied that it had before it all of the information and documentation it required and that it would determine the Application.
8. The Application was brought timeously in terms of regulation 9(2) of the 2011 Regulations.

9. Regulation 3 of the 2011 Regulations (which came into force on 7th March 2011) provides as follows:
- “(1) A landlord who has received a tenancy deposit in connection with a relevant tenancy must, within 30 working days of the beginning of the tenancy—
- (a) pay the deposit to the scheme administrator of an approved scheme; and
 - (b) provide the tenant with the information required under Regulation 42.”
10. The Respondent, as landlord, and/or his letting agents, were required to pay the Applicants’ deposit monies into an approved scheme within 30 working days of 6th July 2020. This was not done. During their deliberations the Tribunal calculated that, not taking account of any public Summer holidays, the deposit was lodged 17 days late.
11. Regulation 10 of the 2011 Regulations provides as follows:
- “If satisfied that the landlord did not comply with any duty in Regulation 3 the First-tier Tribunal -
- (a) must order the landlord to pay the tenant an amount not exceeding three times the amount of the tenancy deposit; and
 - (b) may, as the First-tier Tribunal considers appropriate in the circumstances of the application, order the landlord to—
- (i) pay the tenancy deposit to an approved scheme; or
 - (ii) provide the tenant with the information required under Regulation 42.”
12. The Tribunal, being satisfied that the Respondent did not comply with the duty under Regulation 3, accordingly has to order the Respondent to pay the Applicants an amount not exceeding three times the amount of the tenancy deposit.
13. In the case of *Jenson v Fappiano* 2015 G.W.D 4-89, Sheriff Welsh, in relation to Regulation 10(a) of the 2011 Regulations, was of the opinion that there had to be a judicial analysis of the nature of the non-compliance in the circumstances of the case and a value attached to reflect a sanction which was fair, proportionate and just given those circumstances. Sheriff Welsh was of the opinion that, when determining the sanction value, the starting point was not the maximum award to be discounted by mitigating factors. He considered that this would be inconsistent with the exercise of balanced, judicial discretion.
14. In the case of *Tenzin v Russell* 2015 Hous. L. R. 11, the Court of Session reiterated that the amount of any payment in terms of Regulation 10(a) of the 2011 Regulations is the subject of judicial discretion after careful consideration of the circumstances of the case.
15. In determining a fair, proportionate and just sanction in the circumstances of this Application, the Tribunal have considered and weighed all of the evidence and factors. The tenancy duration was almost 16 months. The deposit monies

were lodged with SDS 17 days late. The Respondent's experienced letting agents should have lodged the deposit timeously. The letting agents were suffering IT problems and were short staffed at the relevant time. When they discovered their administrative error, in not lodging the deposit timeously, they immediately rectified the matter and protected the Applicant's deposit monies. The tenancy ended on 31st October 2021. The Applicants and the letting agents exchanged amicable emails regarding the ending of the tenancy. The Applicants lodged this Application shortly after the tenancy ended, after being informed by SDS that the deposit had been lodged late.

16. Having exercised their judicial discretion, the Tribunal have determined that the sum of £500.00 is an appropriate sanction to impose. The Tribunal find that this sum fairly, proportionately and justly applies a sanction in respect of the Respondent's non-compliance with the Regulations, through his letting agents, in the circumstances of this Application. The participants in the CMD had acknowledged that the deposit had been lodged around 19 working days late. The Tribunal calculated that the deposit was lodged 17 days late. Experienced letting agents are expected to lodge and protect a deposit timeously. The deposit was not lodged in time. The Applicants' deposit was unprotected for a very short period of time. The letting agents had been candid in their acceptance of the late lodgement. They were candid when stating that the delay had been caused by their IT problems and as they were short staffed given the ongoing Covid pandemic. In the circumstances the Tribunal have decided that a fair, just and proportionate sanction to impose in respect of the late lodging of the deposit is £500.00. The Tribunal consider that this sum is appropriate given the short period of non-protection of the Applicants' deposit. The Tribunal have determined that this amount of monetary sanction fairly and reasonably takes account of upset and inconvenience caused to the Applicants as a result of the period of non-protection of their deposit.
17. Accordingly, the Tribunal have determined that an order for payment by the Respondent to the Applicants of the sum of £500.00, in terms of Regulation 10(a) of the 2011 Regulations, should be made.

Right of Appeal

In terms of Section 46 of the Tribunal (Scotland) Act 2014, a party aggrieved by the decision of the Tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party

must first seek permission to appeal from the First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

G McWilliams

14th February 2022

Legal Member